

Eastern District of California

Bankruptcy Judge
Sacramento, California

1. 09-46360-E-13 MARGUERITE GALVEZ MOTION TO DISMISS ADVERSARY
13-2313 AFR-1 PROCEEDING
GALVEZ V. WELLS FARGO BANK, 11-8-13 [7]
N.A.

Final Ruling: The court having previously dismissed the Motion to Dismiss Adversary Proceeding at the Status Conference held December 4, 2013; Civil Minutes, Dckt. 16; **the Motion to Dismiss Adversary Proceeding is removed from the calendar.**

2. [13-27771](#)-E-11 ANGELA CATARATA CONTINUED STATUS CONFERENCE RE:
[13-2265](#) COMPLAINT
CATARATA V. BANK OF AMERICA, 8-26-13 [[1](#)]
N.A. ET AL

Nature of Action:
 Injunctive relief - other
 Recovery of money/property - fraudulent transfer
 Dischargeability - false pretenses, false representation, actual fraud
 Validity, priority or extent of lien or other interest in property
 Recovery of money/property - other

Notice of Voluntary Dismissal of Adversary Proceeding filed 12/2/13
[Dckt 12]; Order granting filed 12/4/13 [Dckt 13]

December 12, 2013 at 1:30 p.m.
- Page 1 of 24 -

3. [13-27771](#)-E-11 ANGELA CATARATA
[13-2266](#)
CATARATA V. WELLS FARGO HOME
MORTGAGE ET AL

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
8-26-13 [[1](#)]

Dismissed 12/4/13

Plaintiff's Atty: Mark Lapham
Defendant's Atty:
David M. Newman [Wells Fargo Bank, N.A.]
Marisol A. Nagata [NDEX West, LLC]
unknown [World Savings Bank, FSB]

Adv. Filed: 8/26/13
Answer: none

Nature of Action:
Injunctive relief - other
Recovery of money/property - fraudulent transfer
Dischargeability - false pretenses, false representation, actual fraud
Validity, priority or extent of lien or other interest in property
Recovery of money/property - other

Final Ruling: The Adversary Proceeding have been dismissed without prejudice by the Chapter 11 Trustee, **the Status Conference is removed from the calendar.** No appearance at the December 12, 2013 Status Conference is required.

Notes:

Continued from 11/13/13 to allow the Chapter 11 Trustee to substitute in this Adversary Proceeding as the real party in interest plaintiff or otherwise address the claim of the estate asserted in this matter.

Notice of Voluntary Dismissal of Adversary Proceeding filed 12/2/13 [Dckt 38]; Order granting filed 12/4/13 [Dckt 40]

4. [13-27771](#)-E-11 ANGELA CATARATA
[13-2266](#) AFR-1
CATARATA V. WELLS FARGO HOME
MORTGAGE ET AL

CONTINUED MOTION TO DISMISS
ADVERSARY PROCEEDING
10-10-13 [[10](#)]

ADVERSARY DISMISSED 12-4-13

Final Ruling: The case having previously been dismissed, the Motion is dismissed as moot.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss Adversary Proceeding having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is dismissed as moot, the case having been dismissed.

5. [13-27771](#)-E-11 ANGELA CATARATA
[13-2267](#)
CATARATA V. WELLS FARGO HOME
MORTGAGE ET AL

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
8-26-13 [[1](#)]

Dismissed 12/4/13

Plaintiff's Atty: Mark Lapham
Defendant's Atty:
David M. Newman [Wells Fargo Bank, N.A.]
unknown [World Savings Bank, FSB; Calwestern Reconveyance]

Adv. Filed: 8/26/13
Answer: none

Nature of Action:
Injunctive relief - other
Recovery of money/property - fraudulent transfer
Dischargeability - false pretenses, false representation, actual fraud
Validity, priority or extent of lien or other interest in property
Recovery of money/property - other

Final Ruling: The Adversary Proceeding have been dismissed without prejudice by the Chapter 11 Trustee, **the Status Conference is removed from the calendar.** No appearance at the December 12, 2013 Status Conference is required.

Notes:

Continued from 11/13/13 to allow the Chapter 11 Trustee to substitute in this Adversary Proceeding as the real party in interest plaintiff or otherwise address the claim of the estate asserted in this matter.

Notice of Voluntary Dismissal of Adversary Proceeding filed 12/2/13 [Dckt 28]; Order granting filed 12/4/13 [Dckt 30]

6.	<u>13-27771</u> -E-11 ANGELA CATARATA <u>13-2267</u> AFR-1 CATARATA V. WELLS FARGO HOME MORTGAGE ET AL	CONTINUED MOTION TO DISMISS ADVERSARY PROCEEDING 10-10-13 [<u>10</u>]
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CASE DISMISSED 12-4-13

Final Ruling: The case having previously been dismissed, the Motion is dismissed as moot.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss Adversary Proceeding having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is dismissed as moot, the case having been dismissed.

7. [13-27771](#)-E-11 ANGELA CATARATA
[13-2268](#)
CATARATA V. WELLS FARGO BANK,
N.A. ET AL

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
8-26-13 [[1](#)]

Dismissed 12/4/13

Plaintiff's Atty: Mark Lapham

Defendant's Atty:

Adam N. Barasch [Wells Fargo Bank, N.A.; MERS; Bank of New York]
unknown [Marin Conveyancing Corp]

Adv. Filed: 8/26/13

Answer: none

Nature of Action:

Injunctive relief - other

Recovery of money/property - fraudulent transfer

Dischargeability - false pretenses, false representation, actual fraud

Validity, priority or extent of lien or other interest in property

Recovery of money/property - other

Final Ruling: The Adversary Proceeding have been dismissed without prejudice by the Chapter 11 Trustee, **the Status Conference is removed from the calendar.** No appearance at the December 12, 2013 Status Conference is required.

Notes:

Continued from 11/13/13 to allow the Chapter 11 Trustee to substitute in this Adversary Proceeding as the real party in interest plaintiff or otherwise address the claim of the estate asserted in this matter.

Notice of Voluntary Dismissal of Adversary Proceeding filed 12/2/13
[Dckt 16]; Order granting filed 12/4/13 [Dckt 18]

8. [13-27771](#)-E-11 ANGELA CATARATA
[13-2271](#)
CATARATA V. BANK OF AMERICA,
N.A. ET AL

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
8-27-13 [[1](#)]

Dismissed 12/4/13

Plaintiff's Atty: Mark Lapham
Defendant's Atty: unknown

Adv. Filed: 8/27/13
Answer: none

Nature of Action:
Injunctive relief - other
Recovery of money/property - fraudulent transfer
Dischargeability - false pretenses, false representation, actual fraud
Validity, priority or extent of lien or other interest in property
Recovery of money/property - other

Final Ruling: The Adversary Proceeding have been dismissed without prejudice by the Chapter 11 Trustee, **the Status Conference is removed from the calendar.** No appearance at the December 12, 2013 Status Conference is required.

Notes:

Continued from 11/13/13 to allow the Chapter 11 Trustee to substitute in this Adversary Proceeding as the real party in interest plaintiff or otherwise address the claim of the estate asserted in this matter.

Notice of Voluntary Dismissal of Adversary Proceeding filed 12/2/13
[Dckt 12]; Order granting filed 12/4/13 [Dckt 13]

9. [13-27771](#)-E-11 ANGELA CATARATA
[13-2272](#)
CATARATA V. BANK OF AMERICA,
N.A. ET AL

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
8-27-13 [[1](#)]

Dismissed 12/4/13

Plaintiff's Atty: Mark Lapham
Defendant's Atty: unknown

Adv. Filed: 8/27/13
Answer: none

Nature of Action:
Injunctive relief - other
Recovery of money/property - fraudulent transfer
Dischargeability - false pretenses, false representation, actual fraud
Validity, priority or extent of lien or other interest in property
Recovery of money/property - other

Final Ruling: The Adversary Proceeding have been dismissed without prejudice by the Chapter 11 Trustee, **the Status Conference is removed from the calendar.** No appearance at the December 12, 2013 Status Conference is required.

Notes:

Continued from 11/13/13 to allow the Chapter 11 Trustee to substitute in this Adversary Proceeding as the real party in interest plaintiff or otherwise address the claim of the estate asserted in this matter.

Notice of Voluntary Dismissal of Adversary Proceeding filed 12/2/13
[Dckt 11]; Order granting filed 12/4/13 [Dckt 12]

10. [13-27771](#)-E-11 ANGELA CATARATA
[13-2273](#)
CATARATA V. BANK OF AMERICA,
N.A. ET AL

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
8-27-13 [[1](#)]

Dismissed 12/4/13

Plaintiff's Atty: Mark Lapham
Defendant's Atty:
Dane W. Exnowski [Mortgage Electronic Registration Systems; Seterus, Inc.;
Federal National Mortgage Association]
unknown [Bank of America, N.A.]

Adv. Filed: 8/27/13
Answer: none

Nature of Action:
Injunctive relief - other
Recovery of money/property - fraudulent transfer
Dischargeability - false pretenses, false representation, actual fraud
Validity, priority or extent of lien or other interest in property
Recovery of money/property - other

Final Ruling: The Adversary Proceeding have been dismissed without prejudice by the Chapter 11 Trustee, **the Status Conference is removed from the calendar.** No appearance at the December 12, 2013 Status Conference is required.

Notes:

Continued from 11/13/13 to allow the Chapter 11 Trustee to substitute in this Adversary Proceeding as the real party in interest plaintiff or otherwise address the claim of the estate asserted in this matter.

Notice of Voluntary Dismissal of Adversary Proceeding filed 12/2/13
[Dckt 27]; Order granting filed 12/4/13 [Dckt 29]

11. [13-27771](#)-E-11 ANGELA CATARATA
[13-2273](#) DWE-2
CATARATA V. BANK OF AMERICA,
N.A. ET AL

AMENDED MOTION TO DISMISS
ADVERSARY PROCEEDING
11-8-13 [[17](#)]

CASE DISMISSED 12-4-13

Final Ruling: The case having previously been dismissed, the Motion is dismissed as moot.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss Adversary Proceeding having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is dismissed as moot, the case having been dismissed.

12. [13-27771](#)-E-11 ANGELA CATARATA
[13-2274](#)
CATARATA V. WELLS FARGO HOME
MORTGAGE ET AL

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
8-27-13 [[1](#)]

Dismissed 12/4/13

Plaintiff's Atty: Mark Lapham
Defendant's Atty: unknown

Adv. Filed: 8/27/13
Answer: none

Nature of Action:
Injunctive relief - other
Recovery of money/property - fraudulent transfer
Dischargeability - false pretenses, false representation, actual fraud
Validity, priority or extent of lien or other interest in property
Recovery of money/property - other

Final Ruling: The Adversary Proceeding have been dismissed without prejudice by the Chapter 11 Trustee, **the Status Conference is removed from the calendar.** No appearance at the December 12, 2013 Status Conference is required.

Notes:

Continued from 11/13/13 to allow the Chapter 11 Trustee to substitute in this Adversary Proceeding as the real party in interest plaintiff or otherwise address the claim of the estate asserted in this matter.

Notice of Voluntary Dismissal of Adversary Proceeding filed 12/2/13 [Dckt 14]; Order granting filed 12/4/13 [Dckt 16]

13. [11-44878-E-7](#) **VLADIMIR/SNEZHANNA** **PRE-TRIAL CONFERENCE RE:**
[12-2573](#) **SEMCHENKO** **COMPLAINT FOR INJUNCTION**
U.S. TRUSTEE V. BRYANT **9-14-12 [[1](#)]**

Plaintiff's Atty: Allen C. Massey
Defendant's Atty: Pro Se

Adv. Filed: 9/14/12
Answer: none

Nature of Action:
Injunctive relief - other

Notes:

Scheduling order -
Close of discovery 10/18/13

Objection to Notice of Continuance of Deposition Duces Tecum filed by Amy E. Williams 11/12/13 [Dckt 294]

Plaintiff's Pre-Trial Statement filed 12/3/13 [Dckt 296]

The Complaint alleges that federal court jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and that this is a core proceeding pursuant to 28 U.S.C. § 157. That this proceeding arises under 11 U.S.C. § 110(j). Complaint ¶ 2, Dckt. 1; Pretrial Conference Statement, Dckt. 296. The Defendant does not assert any contention that this is not a core proceeding in his Answer (Dckt. 82). Federal Rule of Bankruptcy Procedure 7012(b). This Adversary Proceeding is a core proceeding which has been referred to this Bankruptcy Court by the United States District Court for the Eastern District of California. ED Cal. Gen Order 182, 223.

The court shall issue an Trial Setting in this Adversary Proceeding setting the following dates and deadlines:

A. Evidence shall be presented pursuant to Local Bankruptcy Rule 9017-1.

B. The U.S. Trustee shall lodge with the court and serve their Direct Testimony Statements and Exhibits on or before -----, 201x.

C. David L. Bryant, the Defendant, has not designated any witnesses or exhibits to be presented as his case in chief. Pursuant to Local Bankruptcy Rule 9017-1 and the Scheduling Order of this Court, the Defendant has elected not to present non-hostile, non-adverse witnesses or exhibits. This does not limit the proper presentation of hostile, adverse, or other witnesses for whom a Direct Testimony Statement could not have reasonably been prepared, or cross-examination, rebuttal, surrebuttal, impeachment, or other like evidence by the Defendant.

D. The Parties shall lodge with the court, file, and serve Hearing Briefs and Evidentiary Objections on or before -----, 201x.

E. Oppositions to Evidentiary Objections, if any, shall be lodged with the court, filed, and served on or before -----, 201x.

F. The Trial shall be conducted at ----x.m. on -----, 201x.

The U.S. Trustee in his Pretrial Conference Statement, Dckt. 296, and David L. Bryant not having filed a Pretrial Conference Statement, and as stated on the record at the Pretrial Conference, have agreed to and establish for all purposes in this Adversary Proceeding the following facts and issues of law:

Plaintiff(s)

Defendant(s)

<p>Jurisdiction and Venue:</p> <p>1. Jurisdiction is proper pursuant to 28 U.S.C. § 1334(b) in that this is a civil proceeding arising under title 11, specifically 11 U.S.C. § 110(j), and arising in the above captioned bankruptcy case. Venue is proper pursuant to 28 U.S.C. § 1409(a) in that this adversary proceeding has been commenced in the court in which the above captioned bankruptcy case is pending. There appears no dispute concerning jurisdiction or venue. A § 110(j) injunction action is a core proceeding to be heard and determined by a bankruptcy judge under 28 U.S.C. § 157(b)(1). In re Graves, 279 B.R. 266, 271(9th Cir. BAP 2002).</p>	<p>Jurisdiction and Venue:</p> <p>1. No Pretrial Statement Filed</p>
<p>Undisputed Facts:</p> <p>1. Defendant resides or is domiciled in the territory of the Eastern District of California, as described</p>	<p>Undisputed Facts:</p> <p>1. No Pretrial Statement Filed</p>

<p>in 28 U.S.C. § 83(b).</p> <p>2. At all times relevant herein, Defendant has conducted business in the Eastern District of California.</p> <p>3. At all times relevant herein, Defendant has resided or was or is domiciled at 12413 Kibbie Lake Way, Rancho Cordova, CA 95762.</p> <p>4. At all times relevant herein, Defendant has used telephone number (916) 353-xxxx.</p> <p>5. Defendant has admitted at times he is not an attorney.</p> <p>6. Defendant is not, and has not been, an attorney licensed to practice law in California or any other state.</p> <p>7. Defendant is identified as "David Leigh Bryant Esq" in Rancho Cordova on several websites.</p> <p>8. Defendant's caller ID for (916) 353-xxxx showed as "law office" until Defendant removed that description.</p> <p>9. Defendant has an interest in Winchester Consulting, LLC (asserted erroneously as Winchester Consultants, LLC, in the Complaint).</p>	
<p>Disputed Facts:</p> <p>1. Numerous Disputed Facts Stated.</p>	<p>Disputed Facts:</p> <p>1. No Pretrial Statement Filed</p>
<p>Disputed Evidentiary Issues:</p> <p>1. None</p>	<p>Disputed Evidentiary Issues:</p> <p>1. No Pretrial Statement Filed</p>
<p>Relief Sought:</p> <p>Defendant should be permanently prohibited and enjoined from</p>	<p>Relief Sought:</p> <p>1. No Pretrial Statement Filed</p>

<p>preparing or causing to be prepared any bankruptcy document for filing, for compensation or for no compensation, in connection with any case under title 11 of the United States Code, except:</p> <p>1. Defendant may file a petition and other bankruptcy documents in his own individual case under title 11 of the United States Code.</p> <p>2. Defendant may file a proof of claim in which Defendant is the named creditor or a motion for relief from the automatic stay for which Defendant is a party in interest, in connection with a case under title 11 of the United States Code.</p> <p>3. Defendant may file any responsive paper or pleading in a case or proceeding in which Defendant is a real party in interest or a named party, under title 11 of the United States Code.</p>	
<p>Points of Law:</p> <p>1. 11 U.S.C. § 110(j)(1)-(2)(B).</p> <p>2. 11 U.S.C. § 105(a).</p>	<p>Points of Law:</p> <p>1. No Pretrial Statement Filed</p>
<p>Abandoned Issues:</p> <p>1. None</p>	<p>Abandoned Issues:</p> <p>1. No Pretrial Statement Filed</p>
<p>Witnesses:</p> <p>1. Alena Tsiberman</p> <p>2. Stacey Jacobs</p> <p>3. Citi Chandara</p> <p>4. Paul Bartleson</p>	<p>Witnesses:</p> <p>1. No Pretrial Statement Filed</p>

5. Frank Joseph Ferris 6. David Leigh Bryant 7. Doug Tonne 8. Vladimir Semchenko 9. Frances E. Branch 10. Ralph W. Johnson 11. Fernando David Celario 12. Celia Pecson Celario 13. Alexandr Adamov 14. Anna Adamov 15. Joan Davis 16. Valentin Oleshchuk 17. Irena Oleshchuk 18. Robert T. Myers 19. Michael D. Carroll 20. Linda M. Jerviss 21. Saundra Williams 22. Fred Williams 23. Allen C. Massey (re documents received from Mr. Bryant) 24. JoAnne David (re documents received from Mr. Bryant) 25. Alison Manning (re service of UST-1 on Mr. Bryant; nonpayment of fines)	
Exhibits: 1. Memorandum Opinion and Decision, filed as Docket No. 278 on October 22, 2013, in <i>In re Vladimir V. & Snezhanna Semchenko</i> , Case No.	Exhibits: 1. No Pretrial Statement Filed

11-44878-E-7;

2. Order Imposing Fines and Awarding Statutory Damages, filed as Docket No. 277 on October 22, 2013, in *In re Vladimir V. & Snezhanna Semchenko*, Case No. 11-44878-E-7;

3. Memorandum Opinion and Decision (or similarly titled document), filed as Docket No. *** on *****, 2013, in *In re Frances E. Branch*, Case No. 13-28174-C-7;

4. Order Imposing Fines and Awarding Statutory Damages (or similarly titled document), filed as Docket No. *** on *****, 2013, in *In re Frances E. Branch*, Case No. 13-28174-C-7;

5. As an alternative to items 3 and 4 above:

a. Frances E. Branch's petition and other bankruptcy documents filed June 17, 2013, and July 1, 2013, in 13-28174-C-7; case docket;

b. Managing Member of Winchester Consulting, LLC, letter, dated November 5, 2012, with enclosed Mr. Bryant's deposit slips;

c. Receipt dated 12/28/2012 for \$1,500 deposited into Mr. Bryant's account;

d. Receipt dated 3/04/2013 for \$1,500 deposited into Mr. Bryant's account;

e. Debtor's check copy number 4184 to David Bryant for \$1,500, dated 2/05/2013;

f. Debtor's check copy number 4188 to David Bryant for \$1,500, dated 3/27/2013;

g. \$1,500 receipt signed by Mr. Bryant as Managing Member, Winchester Consulting, LLC, dated March 4, 2013;

h. Notice of United States Trustee's Motion for Fines, Fee Disgorgement, and Damages from David L. Bryant; filed as Docket #35 on August 15, 2013, in Case No. 13-28174-C-7, *In re Frances E. Branch*;

I. United States Trustee's Motion for Fines, Fee Disgorgement, and Damages from David L. Bryant; filed as Docket #34 on August 15, 2013, in Case No. 13-28174-C-7, *In re Frances E. Branch*;

j. Memorandum of Points and Authorities in Support of United States Trustee's Motion for Fines, Fee Disgorgement, and Damages from David L. Bryant; filed as Docket #40 on August 15, 2013, in Case No. 13-28174-C-7, *In re Frances E. Branch*;

k. Notice of Related Cases regarding Cases(s) 11-44878; filed as Docket #42 on August 15, 2013, in Case No. 13-28174-C-7, *In re Frances E. Branch*; and

l. Proof of Service, filed as Docket #43 on August 15, 2013, in Case No. 13-28174-C-7, *In re Frances E. Branch*;

6. My Home Law web pages (RFPD Resp Pg1 1-3);

7. Google search pages for "David Leigh Bryant Rancho Cordova" (RFPD Resp Pg 4-18);

8. My Account - David L. Bryant pages (RFPD Resp Pg 19-20);

9. Winchester Consulting, LLC Dear Valued Client letter, April 30, 2012 (RFPD Resp Pg 21-22);

10. Winchester Consulting, LLC Dear Client and Vendors letter, June 19, 2012 (RFPD Resp Pg 23);

11. Receipts for payments from

individuals signed by Mr. Bryant and others (RFPD Resp Pg 420-610);

12. Correspondence with and attachments from Debt Education and Certification Foundation (RFPD Resp Pg 187-401);

13. Documents provided by Fernando and Celia Celario re Mr. Bryant (RFPD Resp Pg 142-186);

14. Fernando D. Celario's petition and other bankruptcy documents filed December 12, 2011, in 11-48681-D-13; case docket;

15. Fernando D. Celario's petition and other bankruptcy documents filed February 14, 2012, in 12-22805-D-13; case docket;

16. Fernando David and Celia Peeson Celario's petition and other bankruptcy documents filed March 14, 2012, in 12-24912-D-7; case docket;

17. The State Bar of California record for Frank Joseph Ferris;

18. Nadia McGraw's petition and other bankruptcy documents filed January 15, 2011, in 11-21149-B-13; case docket;

19. Nadia Elizabeth McGraw's petition and other bankruptcy documents filed February 22, 2011, in 11-24300 -B-13; case docket;

20. Nadia Elizabeth McGraw's petition and other bankruptcy documents filed March 28, 2011, in 11-27617-E-13; case docket;

21. Nadia Elizabeth McGraw's petition and other bankruptcy documents filed May 10, 2011, in 11-31636-A-13; case docket;

22. Nadia Elizabeth McGraw's petition and other bankruptcy documents filed July 26, 2011, in 11-38262-A-13; case docket;

23. Alexandr Adamov's petition and other bankruptcy documents filed July 19, 2011, in 11-37648-A-13; case docket;

24. Alexandr Adamov's petition and other bankruptcy documents filed August 17, 2011, in 11-40031-A-13; case docket;

25. Anna Adamov's petition and other bankruptcy documents filed September 19, 2011, in 11-42527-C-13; case docket;

26. Anna Adamov's petition and other bankruptcy documents filed November 28, 2011, in 11-47654-A-13; case docket;

27. Anna Adamov's petition and other bankruptcy documents filed January 5, 2012, in 12-20210-A-13; case docket;

28. Alexandr Adamov's petition and other bankruptcy documents filed February 23, 2012, in 12-23452-C-13; case docket;

29. Anna Adamov's petition and other bankruptcy documents filed April 2, 2012, in 12-26461-C-13; case docket;

30. Alexandr and Ana Adamov's petition and other bankruptcy documents filed May 2, 2012, in 12-28570-C-13; case docket;

31. Joan Davis' petition and other bankruptcy documents filed August 17, 2011, in 11-40026-E-13; case docket;

32. Joan Davis' petition and other bankruptcy documents filed April 12, 2012, April 24, 2012, and May 9, 2012, in 12-27147-E-13; case docket;

33. Valentin and Irena Oleshchuk's petition and other

bankruptcy documents filed May 24, 2012, June 7, 2012, and September 5, 2012 in 12-29971-C-13; case docket;

34. Robert T. Myers' petition and other bankruptcy documents filed June 4, 2012, in 12-30644-E-13; case docket;

35. Michael D. Carroll's petition and other bankruptcy documents filed August 9, 2011, in 11-48484-RLE13; case docket;

36. Michael D. Carroll's petition and other bankruptcy documents filed September 16, 2011, September 30, 2011, and January 10, 2012 in 11-49983-RLE13/7; case docket;

37. Michael D. Carroll's petition and other bankruptcy documents filed July 9, 2012, in 12-45746-MEH13; case docket;

38. Linda M. Jerviss' petition and other bankruptcy documents filed February 8, 2011, in 11-23141-C-7; case docket;

39. Linda M. Jerviss' petition and other bankruptcy documents filed July 3, 2013, in 13-28981-E-13; case docket;

40. Winchester Consulting, LLC, facsimile letter to Nationstar Mortgage, LLC, re Linda M. Jerviss, dated July 2, 2013;

41. Fred and Saundra Williams' petition and other bankruptcy documents;

42. United States Trustee's Motion for Fines, Fee Disgorgement, and Damages from David L. Bryant - in Case No. 11-44878, *In re Vladimir Semchenko and Snezhanna Semchenko*, Filed March 29, 2012 (Dkt. No. 58);

43. Memorandum of Points and Authorities in Support of United States Trustee's Motion for Fines,

Fee Disgorgement, and Damages from David L. Bryant - in Case No. 11-44878, *In re Vladimir Semchenko and Snezhanna Semchenko*, Filed March 29, 2012 (Dkt. No. 66);

44. Proof of Service - in Case No. 11-44878, *In re Vladimir Semchenko and Snezhanna Semchenko*, Filed March 29, 2012 (Dkt. No. 68);

45. Complaint for Injunction - in Adversary No. 12-02573, *United States Trustee vs. David L. Bryant*, Filed September 14, 2012 (Dkt. No. 1)

46. Answer to United States Trustee's Complaint for Injunction - in Adversary No. 12-02573, *United States Trustee vs. David L. Bryant*, Filed January 15, 2013 (Dkt. No. 83);

47. Superior Court of California, County of Sacramento Court Docket - in Case No. 34-2013-00135042-CU-NP-GDS, *In re David L. Bryant, Winchester Consulting, LLC vs. Alena Tsiberman*;

48. Plaintiff's Claim and ORDER to Go to Small Claims Court, Filed October 1, 2012, in what became Case No. 34-2013-00135042, *In re David L. Bryant, Winchester Consulting, LLC vs. Alena Tsiberman*, and docketed there on April 25, 2013;

49. Plaintiff's Claim and ORDER to Go to Small Claims Court, Filed November 8, 2012, in what became Case No. 34-2013-00135042, *In re David L. Bryant, Winchester Consulting, LLC vs. Alena Tsiberman*, and docketed there on April 25, 2013;

50. Notice of Motion and Motion to Disqualify Attorney Julia M. Young as Defendant's Attorney of Record; and Motion for In Camera Review of the Declaration of David L. Bryant and the Supplemental Declaration of David L. Bryant in

Support of his Motion; and Motion for a Protective Order Precluding Attorney Julia Young from Using Privileged Information in Her Representation of Defendant - in Case No. 34-2013-00135042, *In re David L. Bryant, Winchester Consulting, LLC vs. Alena Tsiberman*, Filed April 5, 2013 (Dkt. No. 47);

51. Request for Judicial Notice in Support of David L. Bryant's Motion to Disqualify Attorney Julia M. Young as Defendant's Attorney of Record; Motion for in Camera Review of the Declaration of David L. Bryant and the Supplemental Declaration of David L. Bryant in Support of His Motion; and Motion for a Protective Order Precluding Attorney Julia Young from Using Privileged Information in Her Representation of Defendant - in Case No. 34-2013-00135042, *In re David L. Bryant, Winchester Consulting, LLC vs. Alena Tsiberman*, Filed April 5, 2013 (Dkt. No. 49);

52. David L. Bryant's Verified Cross-Complaint - in Case No. 34-2013-00135042, *In re David L. Bryant, Winchester Consulting, LLC vs. Alena Tsiberman*, Filed April 26, 2013 (Dkt. No. 88);

53. Reporter's Transcript of Proceedings held on August 29, 2013, at 1:30 p.m., in *In re Vladimir V. and Snezhanna Semchenko (United States Trustee v. David Leigh Bryant)*, Adversary No. 12-2573 (Case No. 11-44878-E-7);

54. Reporter's Transcript of Proceedings held on September 24, 2013, at 1:30 p.m., in *In re Vladimir V. and Snezhanna Semchenko (United States Trustee v. David Leigh Bryant)*, Adversary No. 12-2573 (Case No. 11-44878-E-7); and

55. Reporter's Transcript of Proceedings held on November 14, 2013, at 10:00 a.m., in *In re*

<i>Francis E. Branch (United States Trustee v. David L. Bryant), UST-2, Case No. 13-28174-C-7;</i>	
Discovery Documents: 1. Deposition of David Leigh Bryant of October 15, 2013; and 2. Deposition of Stacey Jacobs of September 30, 2013.	Discovery Documents: 1. No Pretrial Statement Filed
Further Discovery or Motions: 1. None	Further Discovery or Motions: 1. No Pretrial Statement Filed
Stipulations: 1. None	Stipulations: 1. No Pretrial Statement Filed
Amendments: 1. None	Amendments: 1. No Pretrial Statement Filed
Dismissals: 1. None	Dismissals: 1. No Pretrial Statement Filed
Agreed Statement of Facts: 1. None	Agreed Statement of Facts: 1. No Pretrial Statement Filed
Attorneys' Fees Basis: 1. None	Attorneys' Fees Basis: 1. No Pretrial Statement Filed
Additional Items 1. None	Additional Items 1. No Pretrial Statement Filed
Trial Time Estimation: Two Days	Trial Time Estimation: No Pretrial Statement Filed

14. [13-91989-E-7](#) WILFRED/TINA ANDERSON
EJN-1 Patrick B. Greenwell

MOTION TO REQUIRE DEBTOR TO
SHUT DOWN BUSINESS
12-8-13 [[15](#)]

Notice Provided: The Motion to Require Debtor to Shut Down Business was filed December 8, 2013. A Proof of Service was not filed with the Ex Parte Motion. The court entered an order setting the Motion for emergency hearing on December 9, 2013. The Order was served by the Clerk of the Court through the Bankruptcy Noticing Center on Debtor, Attorney for Debtor, Chapter 7 Trustee and the Office of the U.S. Trustee, on December 9, 2013. 3 days notice of the hearing was provided.

No Tentative Ruling.

On December 8, 2013, the Chapter 7 Trustee filed an *Ex Parte* Motion for an "Order Requiring Debtor to Shut Down Business." No proof of service or notice of the *Ex Parte* Motion has been filed and nothing indicates that it was served by the Trustee on the Debtors or counsel for the Debtors.

The Motion states with particularity (Fed. R. Bankr. P. 9013) the following:

- a. Debtors filed bankruptcy on November 6, 2013.
- b. Debtors filed their Schedules on November 6, 2013. These Schedules indicate that the Debtors have a sole proprietorship.
- c. The assets used in the sole proprietorship are property of the bankruptcy estate.
- d. The Chapter 7 Trustee has not authorized the Debtors to use any property of the estate.

Schedule C filed by the Debtors asserts an exemption in the amount of \$1,500.00 in personal property with a value of \$1,500.00, described as "Misc tables, chairs, toys, mats, and supplies used in Tina's Daycare." Dckt. 12 at 8. This same description of assets is used in response to question 29 on Schedule B. *Id.* at 6.

The court has been placed in a quandary with this Motion and the conduct of the Debtors. First, it is being asked to issue injunctive relief against the Debtors without hearing or notice. Generally, injunctive relief must be requested through an adversary proceeding. Fed. R. Bankr. P. 7001(7). While this Rule does not require an adversary proceeding for an order compelling the debtor to turn over property of the estate to the trustee, such has not been requested. Fed. R. Bankr. P. 7001(1). Further, no basis is shown for a trustee obtaining such an order, even by motion, without notice or hearing.

The Motion does not contain any information (and is not supported by any evidence other than the Schedules) as to any communications by the Trustee concerning the business and assets.

Conversely, the file for this case is devoid of any efforts by the Debtors to obtain either authorization to use assets or obtain the immediate abandonment from the Trustee. There is nothing to indicate that the Debtors

attempted to communicate with the Trustee, advise the Trustee of insurance which exists for the operation of such business, and that the estate is protected by such insurance for the use of its assets (comprehensive and general liability). Rather, it appears that the Debtors have chosen to file a Chapter 7 case, free of the responsibilities of a Chapter 13 debtor in restructuring their business, and then use assets which are property of the estate as they please. Merely because they have claimed an exemption does not result in these assets not being property of the estate. A debtor may claim an exemption in an asset. The vast majority of exemptions under California Law (the applicable bankruptcy exemptions in California, Cal. Civ. Pro. § 703.140) are for monetary amounts in assets of the estate. Such assets continue to remain property of the estate until used, sold, or abandoned from the estate. *Schwab v. Reilly*, 130 S.Ct. 2652, 2667, 177 L. Ed. 2d 234 (2010); *Gebhart v. Gaughan (In re Gebhart)*, 621 F.3d 1206, 1210 (9th Cir. 2010).

In light of the *Ex Parte* Motion and the inaction of the Debtors, the court sets an emergency hearing on this Motion. Appearance of counsel for the Debtors, Patrick Greewell (personally) and Eric J. Nims (personally and by counsel, if so represented) is required for this emergency hearing. Telephonic appearances are permitted.

The court ordered that a hearing on the Trustee's *Ex Parte* Motion for an Order Requiring Debtors to Shut Down Business to be conducted and for the parties to appear.

DECEMBER 12, 2013 HEARING